

1 Lisa A. Villasenor, Esq.  
State Bar Number: 133984  
2 **MANNING & MARDER**  
**KASS, ELLROD, RAMIREZ LLP**  
3 One California Street, Suite 1100  
San Francisco, CA 94111  
4 Telephone: (415) 217-6990  
Facsimile: (415) 217-6999  
5 lav@mmker.com

6 Attorneys for Defendant,  
J.C. PENNEY CORPORATION, INC.

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 LOUELLA BOREN and LEROY BOREN,  
12 Plaintiffs,  
13 vs.  
14 J.C. PENNEY CORPORATION, INC.,  
15 Defendant.

Case No.: C 07-03532 EDL

16 **STIPULATION AND ORDER FOR**  
17 **DEFENSE MEDICAL**  
18 **EXAMINATION PURSUANT TO**  
19 **FEDERAL RULES OF CIVIL**  
20 **PROCEDURE, RULE 35**  
21 **[Honorable Elizabeth D. Laporte]**

22 Date: April 7, 2008  
23 Time: 3:30 p.m. 3:00 pm  
24 Location:  
25 411 30<sup>th</sup> Street, Suite 403  
26 Oakland, CA 94609

27 **STIPULATION**

28 IT IS HEREBY STIPULATED, by and between the parties, through their counsel, that:

1. Plaintiff, LOUELLA BOREN, will submit to a defense medical examination regarding her claimed physical injuries, pursuant to Federal Rules of Civil Procedure, Rules 26 and 35, under the conditions set forth below. The purpose of this examination is to determine the extent of plaintiff LOUELLA BOREN's physical injuries, if any, that plaintiff alleges she sustained due to the incident that is the subject of this lawsuit.

///

///

///

2. The examination will be conducted by:

Dave M. Atkin, M.D.  
411 30<sup>th</sup> Street, Suite 403  
Oakland, CA 94609  
Phone: (510) 486-8007

Date: April 8, 2008

Time: 3:30 p.m. 3:00 p.m.

3. The examination will or may consist of a clinical examination of the plaintiff, with a focus on current as well as past, physical condition, level of functioning and medication, tests, oral questions, and other such necessary procedures, none of which will be painful, protracted or intrusive, will also be administered. All testing and examinations will be performed by Dr. Atkin. The testing will include a physical examination, all of which should take no more than three hours, with breaks as necessary. If prior medical records exist for the claimed injuries, they are to be made available to Dr. Atkin pursuant to Rules 26 and 35.

4. Plaintiff will answer all proper questions about her claimed injuries and medical history submitted to her by Dr. Atkin, including occupational history and prior medical and physical health conditions for the purpose of making a proper diagnosis of plaintiff's condition.

5. Defendant shall bear the costs of the examination.

6. Defendant shall provide and bear the costs of an American sign language interpreter during the exam. The interpreter shall be female.

7. Plaintiff shall respond as required by Federal Rules of Civil Procedure, Rules 26 and 35.

Dated: February 22, 2008

**MANNING & MARDER  
KASS, ELLIOTT, RAMIREZ LLP**

By: \_\_\_\_\_

Lisa A. Villaseñor  
Attorneys for Defendant,  
J.C. PENNEY CORPORATION, INC.

April 8th  
Dated: February \_\_\_\_, 2008

**LAW OFFICES OF MAUREEN E. MCFADDEN**

By: \_\_\_\_\_

Maureen E. McFadden  
Attorneys for Plaintiffs,  
LOUELLA BOREN and LEROY BOREN

**ORDER**

**IT IS HEREBY ORDERED,**

1. That plaintiff, LOUELLA BOREN, will submit to a defense medical examination regarding her claimed physical injuries, pursuant to Federal Rules of Civil Procedure, Rules 26 and 35, under the conditions set forth below. The purpose of this examination is to determine the extent of physical injuries, if any, that plaintiff alleges she sustained during the incident that is the subject of this lawsuit.

2. That the examination be conducted by Dave M. Atkin, M.D. who is located at 411 30<sup>th</sup> Street, Suite 403, Oakland, CA 94609. Dr. Atkin's office telephone number is (510) 486-8007.

3. That the examination will or may consist of a clinical examination, detailed medical history and evaluation of the current as well as past, physical condition, level of functioning and medication, tests, oral questions, and other such necessary procedures, none of which will be painful, protracted or intrusive, will also be administered. All testing and examinations will be performed by Dr. Atkin. The testing will include a physical examination, all of which should take no more than three hours, with breaks as necessary. If prior medical records exist for the claimed injuries, they are to be made available to Dr. Atkin pursuant to Rules 26 and 35.

4. That plaintiff will answer all proper questions about her claimed injuries and medical history submitted to her by Dr. Atkin, including occupational history and prior medical and physical health conditions for the purpose of making a proper diagnosis of plaintiff's condition.

5. That defendant shall bear the costs of the examination.

6. That defendant shall provide and bear the costs of an American sign language interpreter during the exam. The interpreter shall be female.

7. That plaintiff will respond as required by Federal Rules of Civil Procedure, Rules 26 and 35.

Dated: April 14, 2008



Honorable Elizabeth D. Laporte

**CERTIFICATION OF SERVICE**

*LOUELLA BOREN AND LEROY BOREN v. J.C. PENNEY CORPORATION, INC.*  
United States District Court - Northern District Case No.: (C 07-03532 EDL)

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One California Street, Suite 1100, San Francisco, CA 94111.

On April 8, 2008, I served the document described as STIPULATION AND ORDER FOR DEFENSE MEDICAL EXAMINATION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 35 on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

☒ **(BY MAIL)** I caused such envelope to be deposited in the mail at San Francisco, California. The envelope was mailed with postage thereon fully prepaid.

I placed such envelope with postage thereon prepaid in the United States mail at San Francisco, California.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT COURIER):** I placed the above-referenced document(s) in an envelope for collection and delivery on this date in accordance with standard \_\_\_\_\_ overnight delivery procedures.

☒ **(BY FACSIMILE)** I telecopied such document to the offices of the addressee at the following fax number: (510) 987-7318.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 8, 2008 at San Francisco, California.

  
\_\_\_\_\_  
Carlos Rios

**SERVICE LIST**

Maureen E. McFadden, Esq.  
Law Offices of Maureen E. McFadden  
819 Bancroft Way  
Berkeley, CA 94710  
*Phone: (510) 845-5203*  
*Fax: (510) 868-0976*

**Attorney for Plaintiffs**  
**LOUELLA BOREN and LEROY BOREN**

Dave M. Atkin, M.D.  
411 30<sup>th</sup> Street, Suite 403  
Oakland, CA 94609  
Phone: (510) 486-8007  
Fax: (510) 987-7318

**IME Doctor**